

Attorney Docket No. 9391-2  
Application Serial No. 10/085,526  
Filed: February 26, 2002  
Page 8 of 9

### REMARKS

Applicant hereby requests further consideration of the application in view of the amendments above and the comments that follow. This response is submitted in reply to the Final Action ("the Action") mailed September 15, 2005 (to the wrong address). Claims 1-20 and 39-46 are pending in the application but stand rejected as will be discussed below.

#### I. Incorrect Mailing Address

Applicant acknowledges, with appreciation, that in response to a telephone call from Applicant's representative, the Examiner offered to make sure the correct mailing address will be entered into the system, as the Action was somehow erroneously sent to a mailing address in Texas that is not of record.

#### II. Terminal Disclaimer

The Action provisionally rejects the pending claims under the judicially created doctrine of obviousness-type double patenting over Claims 1-87 of co-pending (allowed) U.S. Patent Application Serial No. 10/930,965. Applicant is submitting concurrently herewith a Terminal Disclaimer to obviate this rejection. As such, at least Claims 1-20, 39 and 40 are in condition for allowance, which action is respectfully requested.

#### III. The 35 USC §112, First Paragraph Rejections

The Action rejects Claims 41-46 under 35 USC §112, second paragraph because the Action alleges that the claims contain subject matter that "was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention." In particular, the Action alleges that: with respect to Claim 41, "support for the macropores interconnecting the micropores cannot be found"; and with respect to Claim 45, "support for the macropores extending in three dimensions cannot be found." Applicant respectfully disagrees.

With respect to objected to subject matter of Claim 45, Applicant respectfully directs the Examiner's attention to Figures 2a-2e, which clearly show the macropores extending in three dimensions. Further, page 9 (para. 6) of the application states that "the formation material is in block form, with 2 - or 3 dimensionally oriented macroscopic tubular pores

Attorney Docket No. 9391-2  
Application Serial No. 10/085,526  
Filed: February 26, 2002  
Page 9 of 9

passing through each block...". As such, Applicant submits that Claim 45 has clear written and illustrative support.

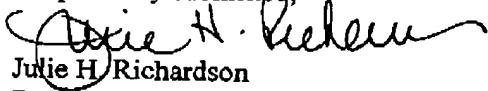
Regarding Claim 41, it is at least inherent that the macropores interconnect the micropores as the micropores themselves are formed as "open interconnecting microporosity" (see, e.g., p. 8, penultimate line and Figure 1). Indeed, Applicant submits that Figure 1 of the instant application clearly shows an interconnecting microporous scaffold of calcium phosphate particles. The particles are sintered together to form the interconnecting microporous structure. Applicant submits that any tubular macropore extending through the shaped body would interconnect micropores. In addition, there is no requirement that the claimed subject matter have *ipsis verbis* support. Applicant submits that one of skill in the art would find the claimed subject matter was in the inventor's possession based on the specification and/or figures. Nonetheless, Applicant has amended Claim 41 in a non-narrowing manner to obviate the noted rejection.

In view of the foregoing, Applicant submits that Claims 41-46 are in condition for allowance, which action is respectfully requested.

#### IV. Conclusion

Accordingly, Applicants submit that the present application is in condition for allowance and the same is earnestly solicited. Should the Examiner have any matters outstanding of resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

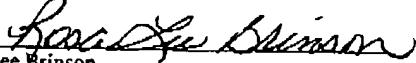
Respectfully submitted,

  
Julie H. Richardson  
Registration No.: 40,142

USPTO Customer No. 20792  
Myers Bigel Sibley & Sajovec  
Post Office Box 37428  
Raleigh, North Carolina 27627  
Telephone: 919/854-1400  
Facsimile: 919/854-1401

CERTIFICATION OF FACSIMILE TRANSMISSION  
UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on November 8, 2005.

  
Rosa Lee Brinson